

and as the proceedings in the magistrate's court have not been concluded, and the applicant is on bail, he has no means of challenging the validity of those proceedings.

Had the applicant been in actual custody, and not on bail, he would have been entitled to apply for a writ of *habeas corpus* under section 375 (a) of the Criminal Procedure Code. He can of course surrender to his bail, and upon being remanded in custody, make a fresh application for a writ of *habeas corpus*. If he prefers to remain on bail, then the only way in which this matter can be resolved is for him to go back to the Ninth Magistrate's Court and request that court to conclude the proceedings before it by making any one of the orders already indicated which in the wisdom of that court is most appropriate in the light of the facts proved and the submissions made. If the Ninth Magistrate's Court makes an order under the Extradition Act, 1968, for the surrender of the applicant to Malaysia, the applicant may in that case ask the High Court to review that order under section 37 of the said Act. On the other hand if the Ninth Magistrate's Court makes an order for the return of the applicant to Malaysia under section 54 of the Criminal Procedure Code, the applicant may appeal against that order to the High Court under section 290 of the Criminal Procedure Code.

Mr. Marshall submits that if this court holds that the applicant is not entitled to the writ of *habeas corpus* under section 375(b) of the Criminal Procedure Code, then he would invoke section 375(c) of the Criminal Procedure Code under which the applicant is in his submission clearly entitled to the writ. Section 375(c) reads as follows:—

"375. Any person:—

(a) xxx xxx xxx

(b) xxx xxx xxx

(c) who claims to be brought before the court to be dealt with according to law,

may apply to the High Court for a writ of *habeas corpus*."

In my opinion this submission must also fail. The expression "who claims to be brought before the court" refers to a person who is in actual custody and who claims the right to be brought before the court to be dealt with according to law e.g. a defendant in custody under a writ of attachment. Such a person can claim to be brought before the court to be dealt with according to law. It does not mean that any person can claim to be brought before the court. If that were so then every person who desired the opinion of the High Court on some question or matter could "claim to be brought before the court to be dealt with according to law." I have no doubt at all that only a person in

actual custody whose case is not covered by paragraphs (a) and (b) can claim the right to be brought before the High Court because "brought before the court" means brought from actual custody.

In my judgment it is fundamental, that in the absence of any statutory provision enabling him so to do, an applicant for a writ of *habeas corpus*, who is out on bail, is not entitled to apply for this writ.

For these reasons, in my opinion, this application for a writ of *habeas corpus* is misconceived and it is therefore dismissed.

Application dismissed.

RE CHAI KAI WOOL

[O.C.J. (Chang Min Tat J.) August 4, 1969]

Iipoh—Petition for Admission No. 82 of 1968]

Advocates and Solicitors — Admission — Reading in chambers — Application for shortening period of — Special grounds — Reading in chambers before call to English Bar — Whether acceptable for the purpose of Advocates and Solicitors Ordinance, 1947, s. 5(3)(c).

The petitioner applied for shortening of the period of reading in chambers. He had read as a barrister for 8 months only and sought to shorten the period by some 4 months. The reason given for the application was that by some mishap in processing the results of overseas examinees in the May 1968 examinations, the success of the applicant was not communicated to him in time to entitle him to arrange his call to the English Bar in the Trinity 1968 term and he was in fact not called until the Michaelmas 1968 term some 4 months later.

Held: there were no special grounds in this case for granting the application.

Cases referred to:—

(1) *In Re Ahmad bin Mohamed Ibrahim* (1946), 2 M.C. 201.

(2) *In Re K.T.K. Tangamani* [1948] M.L.J. 101.

(3) *In Re Kim Chwee Chia* [1947] M.L.J. 108.

(4) *In Re Hussein bin Onn* [1962] M.L.J. 244.

(5) *In Re Chan Sek Keong* [1962] M.L.J. 88.

PETITION FOR ADMISSION.

Ng Chee Kong for the applicant/petitioner.

K.A. Menon for the Bar Council.

M. Moganasundram for the Bar Committee, Perak.

M. Mahalingam (Deputy Public Prosecutor) for the Attorney-General.

Cur. Adv. Vult.

Chang Min Tat J.: By notice of motion, the applicant applies for an order that (and here I quote the words of the notice):—

"The period be shortened to the 19th day of July 1969 in compliance with section 5(3)(c) of the Advocates and Solicitors Ordinance."

The facts are briefly as follows: the applicant secured a conditional pass in the Bar Finals in September 1967. He then returned to this country on the 1st September, 1967. He alleges he immediately commenced reading in the chambers of an advocate and solicitor of not less than 7 years' standing and continued so reading until the 19th July, 1969. During this period and while in Malaya, in May, 1968, he sat for the subject in which he had failed to pass and was called to the English Bar *in absentia* on the 26th November, 1968. That being so, his reading though said to be of some 22 months was not entirely while he was a barrister. Of this period, only the last part of some 8 months was as a barrister. He filed his petition on the 12th December, 1968. The last date of posting was the 15th December, 1968. He passed his *viva voce* examination on the 23rd April, 1969.

Section 5(3)(c) requires reading in proper chambers of at least 12 months. Having read as a barrister for some 8 months only, the applicant now seeks to shorten the required period by some 4 months. The reason for his application is that by some mishap in processing the results of oversea examinees in the May 1968 examinations, for which he was of course in no way responsible, his success was not communicated to him in time to enable him to arrange his call to the English Bar in the Trinity 1968 Term, and he was in fact not called until the Michaelmas 1968 Term some 4 months later.

In support of his application, the applicant produced a letter from the Council of Legal Education which set out the omission and ended thus:—

"I understand that his period of pupillage may only commence officially after his call to the Bar and this has, therefore, also been delayed by four months.

As the delay is not due to any fault of Mr. Chai's the Council requests that consideration be given to the possibility of treating Mr. Chai's pupillage as having commenced on July 18th, 1968 being the date of Call Day for the Trinity 1968 Term and that similar consideration should be given to other students whose Call was likewise delayed."

The application is opposed by the Bar Council and by the Attorney-General but not by the Bar Committee of Perak.

For the applicant, Mr. Ng Chee Kong suggests that section 5(3) is silent as to when the period of reading commences and submits that the period of reading before the filing of the petition can be counted. I do not think that the latter of his submission can be gainsaid, since the period of posting needs be for only 6 months, but the pertinent question surely is the status of the reader. In other words, must the reader be a barrister before the period can be

A counted? It seems to me that by implication, from the words used in the notice of motion, Mr. Ng Chee Kong concedes that this must be so, since the motion he moves is not for a declaration that the applicant has read for the required period but is for a shortening of the period of statutory reading by a period equivalent to the 4 months spent by the applicant in reading while still not called to the English Bar. What he submits is that the failure to process the results constitutes a special ground within the meaning and intent of section 5(5) of the Ordinance.

C Mr. Ng Chee Kong relies on two cases, *In Re Ahmad bin Mohamed Ibrahim*⁽¹⁾ and *In Re K.T.K. Tangamani*.⁽²⁾ Both are Singapore cases but the provisions of law are *in pari materia* (there have since been some amendments but they are of no significance in reading these cases), so that even if they are not binding on me, I must find them very strongly persuasive. D In *Ahmad's* case, Murray-Aynsley C.J. who clearly decided in favour of the petition on the grounds of the extensive experience acquired by the petitioner, was reported to have said that he could find no express provision in the Ordinance to show that the accepted practice of students reading in chambers before their call to the Bar should only apply to England and should not apply to Singapore. This was echoed by William C.J. in the Malayan case of *In Re Kim Chwee Chia*⁽³⁾ at page 110, but the learned Chief Justice there added:—

F "Particularly as the petitioner in this matter attended and received some instruction after his call to the Bar."

Unfortunately the reports of both *Ahmad's* case and *Kim Chwee Chia's* case are silent on the facts of the reading. In the former case, what Murray-Aynsley C.J. said would appear to be an *obiter dictum*, and in the latter case, it would appear that the petitioner read in the chambers of a practising barrister in England for 8 months, after his call. If so, this latter case could not be of much assistance to the applicant. The facts are thus at least different in this aspect: the applicant has not read in the chambers of a practising barrister in England. H The importance of this factor of reading in England was emphasised in another case. *In Re K.T.K. Tangamani*, *supra*, Tangamani had 12 months' pupillage in England before his call and in his case the learned Chief Justice said:—

I "I think there can be no doubt that the person who is to read in chambers in the Colony is a person who is an English barrister at the time he so reads."

A distinction was thus drawn between reading in England and reading in Singapore. With respect, it therefore does not appear that the cases on which Mr. Ng Chee Kong relies help him in any way.

Mr. Menon, who appears for the Bar Council and is keenly aware of the unenviable position he is in, and who assures that he is merely doing his duty as he conceives it and as he is directed by the Bar Council, relies on the case of *In Re Hussein bin Onn*,⁽⁴⁾ where Thomson C.J. (as he then was) held that on a true interpretation of the Ordinance, only a period of instruction following call to the English Bar could be properly regarded as instruction for the purpose of section 5(3) of the Ordinance and any period of instruction prior to the date of call to the English Bar must therefore be disregarded. There is unfortunately in the judgment no indication that his attention was drawn to *Ahmad's* case and *Tangamani's* case but from the wording of the judgment and in what I regard to be the proper view of *Ahmad's* case, it does not seem to me that this failure has, if I may say so without disrespect, reduced the force of his reasoning in any way.

Mr. Ng Chee Kong seeks however to distinguish the case of *Hussein bin Onn* on the facts but Thomson C.J. (as he then was) in his judgment clearly sought to interpret the law as enacted and applied his interpretation to the facts before coming to his decision to refuse Hussein bin Onn's application. I am unable to persuade myself nor has Mr. Ng Chee Kong succeeded or indeed, even endeavoured to persuade me that the meaning read by the then Chief Justice into section 5(3) of the Ordinance is *per incuriam*.

Mr. Ng Chee Kong in reply cites *In Re Chan Sek Keong*⁽⁵⁾ in which Ong Hock Thye J. (as he then was) shortened the period of posting (the emphasis is mine) from 6 months to a little more than 3 months on the special ground of the delay in passing the Ordinance which enabled Bachelors of Law of the University of Malaya to petition for admission after complying with certain formalities. So far as reading went, the petitioner was fully qualified. He had completed his post-final and had then read for the required 6 months. In the words of the learned judge "In every respect but the length of the posting of the notices the petitioner is already properly qualified to be admitted and enrolled forthwith." Posting is of course an administrative act and has no bearing on the instructions or the length of time thought necessary for an intending practitioner. There was thus in that case nothing prejudicial to the public interest.

The instant case is however not for shortening the period of posting. It is for shortening the period of reading as a barrister. In *Re Kim Chwee Chia's* case, *supra*, Willan C.J. considered in an *obiter dictum* that:—

A "....the test to be applied to the second special ground which must be adduced to shorten or dispense with the period during which a petitioner shall attend and receive instruction in law in an office of a local advocate and solicitor, is whether it is certain that the petitioner has sufficient experience in the local law which would enable him to take the necessary responsibility for advising or otherwise acting professionally for clients, for reward, or as an officer of the court."

B I respectfully agree. I think that in applying this test to the applicant, I must be satisfied that while awaiting his results and in the knowledge or belief that he has failed or at least not passed, after the first published results of the May 1968 examinations had omitted his name, the applicant was reading up the local law and acquiring the necessary experience to enable him to practise professionally in an adequate manner. Unless I am so satisfied, I must find that it is not in the public interest to grant the prayer sought in this motion. Having regard to the normal anxieties, which are entirely understandable, of an examination candidate who knows that if he has failed the May examination, he has only a few months to prepare himself for a resit at the September examination, unless he defers to the following May, I am not at all satisfied that during this period from the May examination to after the first publication of the examination results and thence to the publication of his success, the applicant was engaged, not in preparing for another try at the Bar Finals but in full-time reading up the local law. It must be borne in mind that the legislation requires not only adequacy of reading but also a prescribed period of the reading.

In this connection, it must also be borne in mind that as the law stood at that time and as it still stands, a candidate for the Bar Examinations is limited to a maximum of 4 attempts. Each failure reduces the number of his subsequent appearances. Under such circumstances, a candidate who has or has thought he has failed once, must be expected to ensure his subsequent success by serious work. The applicant is said to have been reading during this period. He might well have. What I am not satisfied is that during this interregnum of 4 months, he was fully engaged in reading which is what the law requires.

Under the circumstances, much as I sympathise with him as a victim of circumstances and much as he is justified in claiming to be sinned against than sinning, I can find in this application no special ground for granting the prayer.

Application refused.